

*Suspension*, as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is *suspended*.

*Unfair trade practices*, as used in this subpart, means the commission of any of the following acts by a contractor:

(1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Co-ordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19814, May 8, 1989; 56 FR 15149, Apr. 15, 1991; 59 FR 11372, Mar. 10, 1994; 60 FR 33065, June 26, 1995]

#### **9.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.**

(a) The General Services Administration (GSA) shall—

(1) Compile and maintain a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

(2) Periodically revise and distribute the list and issue supplements, if necessary, to all agencies and the General Accounting Office; and

(3) Include in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs shall indicate—

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-

references when more than one name is involved in a single action;

(2) The name of the agency or other authority taking the action;

(3) The cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) The effect of the action;

(5) The termination date for each listing;

(6) The DUNS No.; and

(7) The name and telephone number of the point of contact for the action.

(c) Each agency shall—

(1) Notify GSA of the information required by paragraph (b) above within 5 working days after the action becomes effective;

(2) Notify GSA within 5 working days after modifying or rescinding an action;

(3) Notify GSA of the names and addresses of agency organizations that are to receive the list and the number of copies to be furnished to each;

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(5) Establish procedures to provide for the effective use of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, including internal distribution thereof, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, except as otherwise provided in this subpart; and

(6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

(d) Information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe to the list through their organization's printing and distribution office.

(ii) The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 512-1800.

(2) The electronic version is updated daily and provides access to the names of firms and individuals on the list by using an asynchronous ASCII terminal (e.g., a word processor or microcomputer). Users can access the system 24 hours a day, 7 days a week using FTS 2000, or commercial telephone lines and the equipment described in the user's manual. Aside from the normal costs of local or long-distance telephone calls, access is free of charge to the user. To obtain a copy of the user's manual for accessing the system, contact GSA at (202) 501-4740.

(3) A telephone inquiry service to answer general questions about entries on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs is also available by calling GSA at (202) 501-4873 or 501-4740. The inquiry will be answered within one working day.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 19814, May 8, 1989; 57 FR 60577, Dec. 21, 1992; 60 FR 33065, June 26, 1995; 62 FR 40236, July 25, 1997]

#### **9.405 Effect of listing.**

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head or a designee determines that there is a compelling reason for such action (see 9.405-2, 9.406-1(c), 9.407-1(d), and 23.50(e)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with

these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see part 28).

(d)(1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the agency head or a designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head or a designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.

[48 FR 42142, Sept. 19, 1983, as amended at 52 FR 9038, Mar. 20, 1987; 54 FR 19814, May 8, 1989; 54 FR 48982, Nov. 28, 1989; 55 FR 21707, May 25, 1990; 56 FR 29127, June 25, 1991; 59 FR 67033, Dec. 28, 1994; 60 FR 33065, June 26, 1995]

#### **9.405-1 Continuation of current contracts.**

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the agency head or a designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.